

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Daniel Mark Mixson,)
)
) C/A No. 2:11-0101-MBS
Plaintiff,)
)
)
vs.)
)
)
Dr. Leonard, W. Mulbry,)
)
)
Defendant.)
-----)

O R D E R

At the time of the underlying events, Plaintiff Daniel Mark Mixson was a pretrial detainee at the Charleston County Detention Center in North Charleston, South Carolina. Plaintiff, proceeding pro se, filed a complaint on January 12, 2011, asserting that Defendant, a court-appointed psychiatrist, committed malpractice by declaring Plaintiff not competent to assist in his defense. Plaintiff contends that he has suffered physical and mental injury as a result.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A. On March 8, 2011, the Magistrate Judge issued a Report and Recommendation in which she determined that the court lacks either diversity or federal question jurisdiction over the matter. Accordingly, the Magistrate Judge recommended that the complaint be dismissed without prejudice and without issuance and service of process. Plaintiff filed no objections to the Report and Recommendation.¹

¹ The Report and Recommendation originally was sent to Plaintiff's last known address at the Charleston County Detention Center. The envelope containing the Report and Recommendation was returned undeliverable on March 14, 2011. The Report and Recommendation was sent to an alternate address provided by Plaintiff in James Island, South Carolina. The envelope containing the Report and Recommendation has not been returned.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. For the reasons stated hereinabove and in the Report and Recommendation, the complaint is dismissed, without prejudice and without issuance and service of process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

April 15, 2011

NOTICE OF RIGHT TO APPEAL

**Plaintiff is hereby notified of the right to appeal this order
pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**